

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

TULSA, OKLAHOMA

ALLIANCE TRANSPORTATION, INC.

Employer

and

Case 17-RC-12546

TEAMSTERS LOCAL UNION NO. 523

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on May 1, 2008, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine if the petitioned-for unit comprised solely of dump drivers employed by Alliance Transportation, Inc. (Employer) from its 431 West 23<sup>rd</sup> Street, Tulsa, Oklahoma facility (Tulsa facility) constitute an appropriate unit for the purposes of collective bargaining.<sup>1</sup> No other issues were raised in this matter.

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<sup>1</sup> Upon review of the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. Commerce Facts: Alliance Transportation, Inc., the Employer, is incorporated in the State of Oklahoma and is engaged in the construction material hauling industry from its facility located at 431 West 23<sup>rd</sup> Street, Tulsa, Oklahoma, the only facility involved herein. During the past twelve months, a representative period, the Employer, in the course and conduct of its business operations, sold and shipped goods and provided services valued in excess of \$50,000 directly to customers located outside the State of Oklahoma. During this same time period, the Employer derived gross revenues in excess of \$1,000,000.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

**I. DECISION**

For reasons detailed below, I conclude that Teamsters Local Union No. 523 (Petitioner) has failed to demonstrate that a unit comprised solely of dump drivers is an appropriate unit for the purposes of collective bargaining. Instead, the evidence shows that the appropriate unit should include both dump drivers and bulk drivers employed by the Employer.

Accordingly, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time dump drivers and bulk drivers employed by the Employer at its 431 West 23<sup>rd</sup> Street, Tulsa, Oklahoma facility, but EXCLUDING dispatchers<sup>2</sup>, mechanics, confidential employees, office clerical employees, guards and supervisors as defined in the Act, as amended, and all other employees.

There are approximately eighty employees employed in the appropriate unit; fifty-three dump drivers and twenty-seven bulk drivers. The Petitioner has stated its desire to proceed to an election in a broader unit if the petitioned-for unit was found not appropriate. The Petitioner has a sufficient showing of interest to support proceeding in the unit found appropriate herein.

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<sup>2</sup> The parties agreed at the hearing that the dispatchers should be excluded from any unit found appropriate. Additionally, based on the record testimony, it appears that David Dilby and Dennis Smith are potentially statutory supervisors. Based on the parties' agreement and their potential supervisory status, I order that Dilby and Smith be excluded from the unit.

## **II. ISSUE**

The Petitioner seeks an election in a unit consisting of the Employer's fifty-three full-time and regular part-time dump drivers employed at the Employer's Tulsa facility. Contrary to the Petitioner, the Employer contends that the petitioned-for unit is inappropriate and that its twenty-seven bulk drivers share a sufficient community of interest with the dump drivers to require inclusion in the petitioned-for unit.

## **III. STIPULATIONS**

The parties stipulated that Donald Greenmeyer, Jeff Shelton, and Chris Richter should be excluded from the unit as supervisors. Based on the parties' stipulation that the above named individuals possess the authority to hire, fire, transfer, suspend, lay off, recall, promote, assign, reward, or discipline other employees, or effectively recommend such actions with independent judgment, I find that they are supervisors within the meaning of Section 2(11) of the Act, and they will be excluded from the unit.

## **IV. STATEMENT OF FACTS**

### **A. Overview**

The Employer is an Oklahoma corporation engaged in the construction material hauling industry from its 431 West 23<sup>rd</sup> Street, Tulsa, Oklahoma location. The principle business of the Employer is to haul the raw products used in ready-mix production – rock sand, cement, and fly ash, both to concrete plants and to jobsites. The Employer also

hauls other construction materials unrelated to the production of ready-mix, including dirt, demolition materials, and other non-hazardous materials.

In performing its hauling operations, the Employer utilizes identical Kenworth tractors to haul two types of trailers. The tractors are modified on site to pull either a hydraulic dump trailer or a pneumatic bulk trailer. Dump drivers operate either a 39 ½ foot aluminum end-up dump trailer or a 28 foot steel special dump truck. Both the aluminum and the steel dump trailers are hydraulically controlled to dump the hauled materials on the ground at the customer's facility. The dump trailers haul rock, sand, fly ash, cement kiln dust (cdk), gravel, dirt, and demolition materials to both jobsites and concrete plants. The pneumatic trailers operated by the bulk drivers are air pressurized tank trailers that generally carry powdered cement, fly ash, and cdk. The pneumatic trailers use air pressure to unload the contents into concrete plant silos; sometimes the materials are hauled directly to jobsites where stabilization projects are underway. Most bulk loads are delivered to static locations such as concrete plants, which are on average 100 miles from the Tulsa facility, whereas most of the dump truck hauls are closer in distance. On average a bulk driver will haul three loads a day, while a dump driver will average about eight loads a day.

The building at the Employer's facility contains a dispatch office, a shop area, and managers' offices. Besides the building at the Employer's facility, there is a parking lot, which is used by all of the drivers for their personal vehicles, as well as a parking area for

all of the tractors and trailers. The Employer also has a fueling station and a wash bay at the facility, both of which are used by both dump and bulk drivers.

Chris Richter is the Dispatch Manager for the Employer. Richter has direct supervisory responsibility for the two dispatchers at the facility, handles all administrative training, and assists Donald Greenmeyer and Jeff Shelton, who are the supervisors over all bulk and dump drivers. Greenmeyer and Shelton handle discipline issues for dump and bulk drivers, as well as handling bulk and dump drivers' issues with customers. David Dilby dispatches the bulk drivers and Dennis Smith dispatches the dump drivers. Dilby and Smith work with drivers to handle absence reporting and scheduling of vacation requests. The Employer utilizes two dispatchers because of the volume of dispatch traffic. While the dump and bulk drivers have separate dispatchers, the two dispatchers can and do fill in for each other when one is absent from work.

B. Employee Contact and Interchange

Bulk and dump drivers' start times are staggered, and as such, their contact with each other at the facility at the start of their shift is lessened. However, all drivers -- dump and bulk -- have frequent contact with each other during the day, particularly when hauling to the concrete plants owned by Mid-Continent Concrete Company, which accounts for sixty-five percent of the Employer's hauling business. Additionally, both bulk and dump drivers have frequent contact with each other at the Employer's facility where the fueling station and wash bay are located.

In addition to the contact referenced above, there is also evidence that drivers transfer from one driving classification to another. Over a five-year period, employees Robert Cole, Jason Bean, Scott Brudin, and Tommy Esrey transferred to bulk trailer driving from dump trailer driving. Additionally, within the last year, an employee transferred from bulk trailer driving to dump trailer driving. Finally, within the last three months two drivers, Tommy Esrey and Scott Brudin, have operated both bulk and dump trailers based on demand and availability.

C. Skills and Training

Jeff Oujiri, Staffing Specialist, is responsible for hiring all of the Employer's dump and bulk drivers.<sup>3</sup> The Employer places advertisements seeking to hire local drivers, without distinction between dump or bulk positions. Whether new hires are placed in a dump or bulk driver position is solely based on what job is available when they are hired. The Employer does not require prior dump or bulk driving experience when hiring. Rather, the applicant need merely have a commercial driver's license. No other licenses are required for either the dump or bulk drivers. All applicants complete the same applications; have the same physical examination requirements; take the same drug test; and attend the same orientation.

After hire, both dump and bulk drivers receive a five- to seven-day training process. The trainers for dump and bulk drivers are the Employer's experienced drivers,

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<sup>3</sup> Jeff Oujiri recruits and makes the hiring decisions for all of the Employer's dump and bulk drivers. Because he has the authority to hire employees, I find that Oujiri is a supervisor within the meaning of Section 2(11), and will be excluded from the unit.

who have been certified to conduct the driver training. Some of the trainers are certified to train both the dump and bulk drivers. For instance, Robert Cole, who is currently a bulk driver, has trained both dump and bulk drivers. The basic training materials used by the Employer are identical, irrespective of whether the new employee is to be a dump or bulk driver. However, part of the training for the dump and pneumatic drivers is different based on their classification, with dump drivers trained to operate the hydraulic trailer, while bulk drivers must be trained to work on pneumatic systems.

D. Wages, Hours, and General Working Conditions

Dump drivers and bulk drivers are paid under the same wage structure. The wage structure compensates both dump drivers and bulk drivers based on percentage of the freight value of their loads during each pay period. New drivers earn 22 ½ percent of their freight value, while more senior drivers progress to a maximum 25 percent of the freight value of their loads. While both dump and bulk drivers' pay varies daily based on the number of loads each driver hauls, the Employer's target daily wage for both classifications of drivers is \$150 to \$160 per day. All drivers have access to the same benefit package. There are no benefits that one classification receives that the other does not.

Bulk drivers operate two shifts daily, one starting between 3:00 a.m. to 6:00 a.m. and the other between 2:00 p.m. and 3:00 p.m.. Dump drivers operate only one daily

shift, with starting hours anywhere from 3:00 a.m. to 8:00 a.m.. However, both classifications of drivers work approximately 60 hours per week.

Dump and bulk drivers are subject to the same employer policies, disciplinary procedures, and DOT regulations. The Employer's pre- and post-inspection procedures, logging procedures, delivery paperwork, uniforms, and fuel card program are the same for both dump and bulk drivers.

## **V. ANALYSIS**

### **A. Community of Interest**

In deciding whether a petitioned-for unit is appropriate under Section 9(b), the Board has broad discretion, which reflects Congress' acknowledgment of the need for flexibility in shaping the bargaining unit to the particular case. *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985); *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944). The determination of whether a unit is appropriate for the purposes of collective bargaining turns on the degree to which the employees involved share a community of interest. When the interests of a group of employees are dissimilar from those of another group a separate unit is appropriate. See e.g. *Engineered Storage Products Co.*, 334 NLRB 1063 (2001); *Swift & Co.*, 129 NLRB 1391 (1961). However, when the interests of the group in question are not sufficiently separate from the larger group, a more comprehensive unit will be required. *Carpenter Trucking*, 266 NLRB 907 (1983); *Boeing Co.*, 337 NLRB 152 (2001).



In determining whether employees share a community of interest, the Board examines such factors as (1) functional integration; (2) frequency of contact with other employees; (3) employee interchange; (4) degree of skill and common functions; (5) commonality of wages, hours and other working conditions; and (6) shared supervision. *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024 (2004). A review of the community of interest factors demonstrates that dump drivers do not share a separate community of interest distinct from bulk drivers, and as a consequence, a unit consisting solely of dump drivers is not appropriate.

B. Review of Community of Interest Factors

*1. Functional Integration*

All of the Employer's employees are involved in a functionally integrated enterprise. The Employer's business is the delivery of construction materials. In conducting this business, the Employer utilizes two types of trailers to transport those materials. However, despite operating a dump or bulk trailer, all drivers are involved in the Employer's business function, and in fact, are dependent upon one another for the Employer's continued operation.

*2. Frequency of Contact with Other Employees*

Again, the drivers' staggered start times, limit some of the drivers' interaction with each other at the facility. However, the record evidence clearly establishes frequent

contact between the dump and bulk drivers while operating during the day, while waiting to fuel, and when washing their trucks.

### *3. Employee Interchange*

The evidence shows that several drivers have permanently transferred between the two driver classifications. Additionally, there is some evidence of short-term driver interchange based on demand and availability.

### *4. Employee Skills and Common Function*

Dump drivers and bulk drivers possess virtually the same skills, license requirements, and receive nearly identical training. Additionally, both classifications of drivers perform the same function for the Employer, which is to transport construction materials to the Employer's customers. The sole difference in the drivers' skills and function is the trailer they use to transport materials.

### *5. Commonality of Wages, Hours, and Other Working Conditions*

Dump drivers and bulk drivers are both paid under the same wage structure. In fact, the Employer's target daily wage for both classifications is the same. Dump and bulk drivers are subject to all of the same Employer policies and are eligible for all of the same benefits. The daily dump and bulk inspection procedures and paperwork requirements are identical. The only difference in hours between the drivers is that bulk drivers do operate during a second shift. Dump and bulk drivers report to the same work

site, use the same parking lots for their personal vehicles and the dump and bulk trucks, and wear the same uniforms.

*6. Common Supervision*

While there is some evidence that the dispatchers may exercise some limited supervisory authority over the dump and bulk drivers by keeping track of the drivers' attendance and vacation requests, the preponderance of the evidence shows much of the significant supervisory responsibilities related to hiring, discipline, and termination of both the dump and bulk drivers fall to stipulated supervisors Jeff Shelton and Donald Greenmeyer.

An analysis of the foregoing factors demonstrates that dump and bulk drivers share a substantial community of interest and that a unit comprised solely of dump drivers is inappropriate. The interests of the dump drivers are merged with the interests of the bulk drivers. Any slight differences in training and skills related to the equipment used by the two different driver classifications, the lack of a second shift for dump drivers, and the use of separate dispatchers for the dump and bulk drivers does not warrant separating the drivers into two units. As a result the only appropriate unit includes both driver classifications.

C. Extent of Organization

Based on the Petitioner's brief, it appears that its desire for a unit comprised of only dump drivers is motivated by the fact that it has attempted to organize only one of

the Employer's two classifications of drivers. I cannot give controlling weight to the Union's extent of organization in my determination of the appropriate unit. The Board's authority to determine appropriate units under Section 9(b) is limited by Section 9(c)(5), which prohibits the Board from allowing the extent of the Union's organization of the employees in question to control their unit determinations. In *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438 (1964), the Supreme Court explained that the proper statutory test of Section 9(c)(5) allows the Board to consider the Union's organizing extent, but that it cannot be given controlling weight. *Id.* at 441-442.

## **VI. CONCLUSION**

Because the record fails to establish that the petitioned-for unit consisting solely of dump drivers is an appropriate unit for the purposes of collective bargaining, I find that bulk drivers will be included in the appropriate unit in the election directed herein.

## **VII. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have

not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL UNION NO. 523.

#### **VIII. ELECTION NOTICES**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of

the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **IX. LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 17 within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make this list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Suite 100, 8600 Farley, Overland Park, Kansas 66212, on or before **May 21, 2008**. No extension of time to file this list shall be granted except in extraordinary circumstances,

nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is to be submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall by department, etc.) If you have questions, please contact the Regional Office.

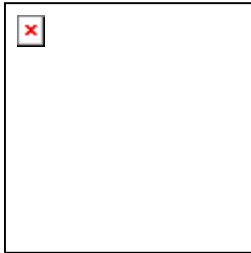
#### **X. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (ET) on **May 28, 2008**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On

the home page of the website, select the E-Gov tab and click E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file documents electronically will be displayed. The request for review may not be filed by facsimile.

SIGNED at Overland Park, Kansas, this 14<sup>th</sup> day of May 2008.



/s/ Daniel L. Hubbel  
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